

BEFORE THE
BOARD OF EDUCATION OF THE
PLACENTIA-YORBA LINDA UNIFIED SCHOOL DISTRICT
STATE OF CALIFORNIA

In The Matter Of The Accusations Against
JOAN ANGELES-DIZON and Other
Certificated Employees of the Placentia-
Yorba Linda Unified School District,

OAH No. 2011030085

Respondents.

PROPOSED DECISION

Administrative Law Judge Sophie C. Agopian, Office of Administrative Hearings, State of California, heard this matter on April 12, 2011, at the Placentia-Yorba Linda Unified School District (District) office located in Placentia, California.

David C. Larsen, Attorney at Law, represented the District's Assistant Superintendent of Personnel Services, Suzette Lovely.

Richard J. Schwab, Attorney at Law, represented the following 25 certificated employees of the District: Joan Angeles-Dizon, Donald Blankenship, Tammy Boysdston, Amanda Cerda, Courtney Deptsy, Shealee Dunavan, Brian Fortenbaugh, Thelma Gandartar, Lizette Garcia, Monica Guzman, Veronica Luna, Matthew Mahoney, Sarah McElwee, Mariana Mondragon, Rachel Moss, Leanne Olson, Andrew Putman, Anna Schenck, Kristen Thompson, Jessica Wijono (Cuellar), Kelly Willey, Michelle Woinarowicz, Susan Yamamoto, Tonia Latorre, and Sally Weirich. One certificated employee, Laura Campuzano, represented herself. All 26 certificated employees, collectively, are Respondents in this matter.

The District has decided to reduce or discontinue certain educational services and has given Respondents notice of its intent not to reemploy them for the 2011-2012 school year. Respondents requested a hearing for a determination of whether cause exists for not reemploying them for the 2011-2012 school year.

Testimonial and documentary evidence were received and oral stipulations were made on the record. The matter was submitted for decision on April 12, 2011.

FACTUAL FINDINGS

1. Assistant Superintendent Lovely filed the Accusations in her official capacity.
2. Respondents are certificated employees of the District with either permanent or probationary status.
3. On March 8, 2011, the District's Board of Education (Governing Board) adopted Resolution Number 45, deciding to reduce or discontinue the following services for the 2011-2012 school year:

<u>Service</u>	<u>FTE¹ Reduction</u>
1. Counselors (K-12)	5.0
2. Psychologists	2.0
3. Elementary TOSAs	4.0
4. Multiple Subject Classes (K-6)	18.0
5. Reduction of Secondary Course Offerings (7-12):	7.0
English (2.0 FTE)	
Physical Education (2.0 FTE)	
Music (1.0 FTE)	
Social Studies (2.0 FTE)	
6. Resource Specialist Program (RSP)	<u>1.0</u>
Total	37.0 FTEs

4. The services identified in Factual Finding 3 are "particular kinds of services" that may be reduced or discontinued within the meaning of Education Code section 44955. The Governing Board's decision to reduce these services will not result in a reduction of services below the levels mandated by state and federal law.

5. The Governing Board's decision to reduce or discontinue the particular kinds of services by 37 FTEs has made it necessary to decrease the number of permanent employees in the District, which means terminating the services of not more than a corresponding percentage of certificated employees of the District, permanent as well as probationary, at the close of the school year.

¹ Full-time equivalent position.

6. As a result of the District's resolution, the Superintendent's designee, Assistant Superintendent Lovely, was authorized and directed to give notice to those certificated employees who might be affected by the determination.

a. Sometime between March 11 and March 15, 2011, Assistant Superintendent Lovely notified, in writing, the District's Governing Board and Respondents that the Superintendent was recommending that Respondents be notified that their services will not be required for the ensuing school year

b. All Respondents timely requested a hearing to determine if there is cause for not reemploying them for the ensuing school year.

c. Assistant Superintendent Lovely thereafter filed and served Accusations, and all necessary documents, upon all Respondents who timely requested a hearing.

d. All but one Respondent, Tonia Latorre, timely filed a notice of defense objecting to the Accusation and requesting a hearing. Because Ms. Latorre did not file a notice of defense in response to the Accusation, she lacks standing to object to the Accusation against her.

e. Prior to the time of the hearing, Respondent Sally Weirich withdrew her request for a hearing, and therefore, also lacks standing to object to the Accusation against her.

f. All prehearing jurisdictional requirements were met.

7. The District established that the reduction or discontinuation of the particular kinds of services set forth in Factual Finding 3 is necessary for the District to maintain a balanced budget and provide for essential services during times of financial uncertainty. According to the District, it anticipates a \$15.5 million budget reduction for the next fiscal year. It is eliminating and/or reducing services in order to save the District nearly \$3 million in costs. The District, therefore, established that the reduction in force is related to the welfare of the District and its pupils and is neither arbitrary nor capricious, but rather, a proper exercise of the District's discretion.

8. In determining the identity and number of employees to notice regarding their proposed layoff, the District properly identified all of the certificated employees providing the particular kinds of services that the Governing Board directed to be reduced or discontinued. It considered all positively assured attrition, including all known resignations and retirements at the end of the school year in determining the number of employees to layoff. Attrition therefore allowed the District to issue less layoff notices, totaling 31, than the number of FTE positions it proposed to reduce or discontinue.

9. The District determined the order of termination of the employees serving in the positions to be reduced or discontinued by creating a seniority list. The seniority list identified

each employee's first date of paid service in a probationary position. Only one Respondent, Kelly Willey, challenged the seniority date assigned to her by the District.

a. Ms. Willey holds a multiple subject credential and was assigned a seniority date of August 25, 2008, a date shared with two other teachers with multiple subject credentials. Ms. Willey contends that her seniority date is August 29, 2007, because that is when she first began working for the District in a probationary position. According to Ms. Willey, when she began her employment with the District on August 29, 2007, the District did not notify her of her temporary status until October 2007, after the commencement of the school year. Because of the late notice, she contends, she became probationary by default effective August 29, 2007. Ms. Willey's contention that her seniority date is August 29, 2007, is persuasive; however, granting her the earlier seniority date does have any substantive effect on the proposed reduction in service.

b. None of the other Respondents challenged the seniority dates assigned to them by the District. For the purpose of correcting a clerical error in the record, the parties stipulated that Amanda Cerda's seniority date is August 28, 2006.

10. When the Governing Board adopted Resolution Number 45, it also adopted a point-based ranking system to break ties among employees sharing the same seniority dates. It assigned points to employees to the extent that they fulfilled the requirements identified by the Board as relating to the "needs of the District," such as CLAD or English Language authorization, possession of additional credentials and advanced degrees, and recent service at particular schools and in extra duty assignments. If the assignment of points did not break ties among the employees, a lottery was held to determine order of seniority. The District established that the tie-breaking system and criteria it adopted reasonably related to the needs of the District and its students.

11. During the hearing, some Respondents disputed that the tie-breaking system developed by the District served the needs of the District and its students, particularly with regard to the following provision (provision seven in the resolution) and its application to their individual circumstances:

One point for service at a Program Improvement and/or Title I school within the last two years (2009-10 and 2010-11).

a. Leanne Olson is an elementary school teacher with a multiple subject credential. She shares a seniority date of August 28, 2006, with eight other elementary school teachers who were also noticed for layoff. Ms. Olson contends that she deserves an additional point under provision seven although she is not currently teaching in a Program Improvement or Title I school and did not perform any services at a Program Improvement or Title I school within the last two school years, which includes the 2009-2010 and 2010-2011 school years. Ms. Olson testified regarding her extensive experience and training in working with the English Language Development (ELD) population at the District. However, she did not establish that working with the ELD population and training to provide services to the ELD population satisfied the

criteria for providing recent “service” at a “Program Improvement and/or Title I school.” While the ELD population at a particular school may have bearing on whether the school qualifies for Title I funding and/or whether the school is subject to Program Improvement, it does not automatically confer Title I status upon a school. Ms. Olson, therefore, is not entitled to an additional point under provision seven of the tie-breaking criteria.

b. Susan Yamamoto is one of the nine elementary school teachers with a seniority date of August 28, 2006. Ms. Yamamoto testified that she taught at Title I elementary schools from 1998 through 2002, and during that time received extensive training in serving Title I students. She also mentored and provided training to teachers serving children in Title I schools. Despite her extensive experience and training with respect to Title I students and teachers, she does not earn an extra seniority point because her service at Title I schools occurred more than two years ago. Ms. Yamamoto’s testimony was offered to establish that the two-year time limitation set forth in provision seven is arbitrary and capricious because it lacked consideration of service and experience acquired before the two-year cut-off. The District, however, established that the recency of service at Title I and/or Program Improvement schools is related to the needs of the District and students because training and interventions applicable to Title I schools are constantly evolving. Furthermore, it is important for the students at such schools to have continuity with respect to the teachers that are providing the services to them.

c. Respondent Joan Angeles-Dizon is also one of the nine elementary school teachers with a seniority date of August 28, 2006. Ms. Angeles-Dizon established that she should have been assigned, but was not assigned, an additional point under the tie-breaking criteria because she worked for a period of three months at a Title I school during the 2009-2010 school year. The additional point assigned to Ms. Angeles-Dizon will result in her being tied with Kristen Thompson, and a lottery must be held to determine the order of seniority between them. While an amendment to the seniority order between Ms. Angeles-Dizon and Kristen Thompson will not impact their proposed layoff, the amendment may impact their order of rehire in the event that the District is able to reinstate employees.

d. Kelly Willey also established that she should have been awarded a point under provision seven because she taught at a Title I school from November 2009 through May 2010, and did not receive such credit. However, because Ms. Wiley established that her seniority date is August 29, 2007, instead of August 25, 2008, under Factual Finding 9a, she is no longer involved in a seniority tie with other elementary school teachers, and therefore, the tie-breaking criteria does not pertain to her.

e. No other Respondent who testified at the hearing, including Jessica Wijono, established that the District misapplied the tie-breaking criteria to their individual circumstances. To the extent that the District committed any procedural errors in assigning tie-breaking credit to any Respondent, such errors are not substantive because they do not have any bearing on the District’s proposed layoffs.

f. None of the Respondents who testified at the hearing in opposition to the tie-breaking criteria established that it was arbitrary or capricious.

12. After the District established a seniority list and broke all existing ties, the District then identified for layoff the least senior employees currently assigned in the various services being reduced, and then permitted eligible employees to bump into positions occupied by more junior employees. In determining who would be laid off for each kind of service reduced the District counted the number of reductions not covered by known vacancies, and determined who must be laid off in inverse order of seniority. According to the District's proposed layoff list, no junior employee will be retained to render a service which a more senior employee is certificated and competent to render.

a. Respondent Anna Schenck has a multiple subject credential. She has a seniority date of August 25, 2008. She testified that Shellie MacMurtrie, who also holds a multiple subject credential, but with less seniority than Ms. Schenck, will be retained by the District for the following school year to serve as an intervention specialist, a position which Ms. Schenck is competent and credentialed to fulfill. Ms. MacMurtrie did not receive a layoff notice. The evidence established, however, that Ms. MacMurtrie has served the District as a day-to-day or long-term substitute since the 2008-2009 school year, and has been released and rehired from year to year to serve in such capacity. She did not receive a layoff notice from the District because she is not subject to the provisions of Education Code sections 44949 and 44955.

13. Prior to the end of the hearing, the District admitted that of the 31 preliminary layoff notices it issued, three of them were issued out of an abundance of caution to account for potential errors in its implementation of the layoff. Precautionary notices were issued to Respondents Tammy Boydston, Brian Fortenbaugh, and Laura Campuzano. Because no challenges were raised during the hearing that might require the termination of such Respondents to effectuate the proposed layoff, the District dismissed the Accusations against the three Respondents.

LEGAL CONCLUSIONS

1. Jurisdiction for the subject proceeding exists pursuant to Education Code sections 44949 and 44955, by reason of Factual Findings 1 through 6.

2. The services listed in Factual Finding 3 are determined to be particular kinds of services within the meaning of section 44955 and applicable case law, by reason of Factual Finding 4.

3. Cause exists under sections 44949 and 44955 for the reduction of the particular kinds of services set forth in Factual Findings 3, because it relates solely to the welfare of the District's schools and pupils, and is not arbitrary or capricious, by reason of Factual Finding 7.

4. In implementing the proposed layoff, the District properly identified the certificated employees providing the particular kinds of services that the Governing Board directed to be reduced or discontinued. The District also took appropriate action to ensure

that no junior certificated employee is scheduled to be retained to perform services that a more senior employee is certificated and competent to render. (Factual Findings 8 through 12.)

5. By reason of Factual Findings 1 through 12, and Legal Conclusions 1 through 4, cause exists to terminate the services of the following Respondents: Joan Angeles-Dizon, Donald Blankenship, Amanda Cerda, Courtney Deptsy, Shealee Dunavan, Thelma Gandar-Tar, Lizette Garcia, Monica Guzman, Veronica Luna, Matthew Mahoney, Sarah McElwee, Mariana Mondragon, Rachel Moss, Leanne Olson, Andrew Putman, Anna Schenck, Kristen Thompson, Jessica Wijono (Cuellar), Kelly Willey, Michelle Woinarowicz, Susan Yamamoto, Tonia Latorre, and Sally Weirich.

6. By reason of Factual Finding 13, cause exists to retain the services of Respondents Tammy Boydston, Brian Fortenbaugh, and Laura Campuzano.

ORDER

1. The Accusations against Joan Angeles-Dizon, Donald Blankenship, Amanda Cerda, Courtney Deptsy, Shealee Dunavan, Thelma Gandar-Tar, Lizette Garcia, Monica Guzman, Veronica Luna, Matthew Mahoney, Sarah McElwee, Mariana Mondragon, Rachel Moss, Leanne Olson, Andrew Putman, Anna Schenck, Kristen Thompson, Jessica Wijono (Cuellar), Kelly Willey, Michelle Woinarowicz, Susan Yamamoto, Tonia Latorre, and Sally Weirich are sustained, and the District may notify them that their services will not be needed during the 2011-2012 school year due to the reduction of particular kinds of services.

2. Notice shall be given in inverse order of seniority.

3. The Accusations against Respondents Tammy Boydston, Brian Fortenbaugh, and Laura Campuzano are dismissed.

Dated: May 6, 2011

SOPHIE C. AGOPIAN
Administrative Law Judge
Office of Administrative Hearings